HIGH COURT OF ORISSA,
CUTTACK

CRIMINAL APPEAL NO. 322 OF 1996

From the judgment dated 27.09.1995 passed by Sri P.K. Choudhury, J.M.S.C., Berhampur in 3(a) C.C. No.27 of 1991 (T.R. No.343 of 1995)

Berhampur Municipality ..... Appellant

Versus

S.Garamma ..... Respondent

For appellant : M/s A. K. Choudhury,
K.K.Das & C.R. Behera

For respondent : None

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 14.08.2006

PRADIP MOHANTY,J. This appeal is directed against the judgment and order dated 27.09.1995 passed by the learned J.M.S.C., Berhampur in 3(a) C.C. Case No.27 of 1991/T.R. No.343 of 1995, acquitting the respondent of the offence under Section 385-A of the Orissa Municipal Act (for short 'the Act').

2. The case of the appellant is that on receipt of complaint on 30.10.1990 from four residents of Bijipur locality about the raising of unauthorized construction by the accused-respondent on a piece of land

belonging to the Berhampur Municipality, P.Ws.1 and 2 surveyed the area on 31.10.1990 individually. On submission of report by P.W.1, the appellant issued notice to the accused-respondent to stop such construction. As the accused-respondent failed to comply the notice, prosecution report was submitted against him for violation of the provisions of Sections 264, 266, 273-A of the Act.

3. The plea of the respondent was complete denial of the allegation.

4. Two witnesses were examined and eight documents exhibited on behalf of the appellant to prove its case. However, no witness was examined behalf of the defence in order to substantiate its plea. Learned J.M.S.C., who tried the case, by his judgment dated 27.09.1995 acquitted the accused-respondent of the offence with the finding that the prosecution has miserably failed to prove the guilt of the accused-respondent under Section 385-A of the Act and also that the case being barred by limitation is not maintainable.

5. Mr. Choudhury appearing for the appellant submitted that the learned Magistrate grossly erred in law in holding that the prosecution report is barred by limitation since it was filed beyond the prescribed period of limitation. According to him, in case of violation of the provisions of the Orissa Municipal Act, the period of limitation for submission of prosecution report is twelve months, as per the proviso to Section 347 of the Act and the provisions of the Code of Criminal Procedure are subject to the provisions of the said Act. He further submitted that no service of show cause notice is contemplated under Sections 264 and 266 of the Act and the trial court has committed manifest error in acquitting the accused-respondent for non-service of such notice.

6. The point for determination is whether the period of limitation as prescribed by the Code of Criminal Procedure or that provided under the Act will apply to the instant case. Section 347 of the Act reads as under:-

> "**347. Persons empowered to prosecute –** Save as otherwise expressly provided in this Act, no person shall be tried for any offence against the provisions of this Act, or of any rule, regulation or bye-law made under it, unless a complaint is made by the police or the Executive Officer of a Municipality or by a person expressly authorized in this behalf by the Municipality or its Executive Officer, within three months of the commission of the offence. But nothing herein shall affect the provisions of the Code of Criminal Procedure, 1898 (Act 5 of 1898) in regard to power of certain Magistrate to take cognizance of offences upon information received or upon their own knowledge or suspicion:
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> Provided that failure to take out a licence or obtain permission under this Act shall, for the purposes of this section, he deemed a continuing offence until the expiration of the period, if any, for which the licence or permission is required, and if no period if specified, complaint may be made at any time within twelve months from the commencement of the offence."

From a bare reading of the above provision, it is crystal clear that the Police, or the Executive Office or any person authorized in this behalf by the Executive Officer, within three months of the commission of the offence shall file a complaint before the Magistrate. In the proviso, it is provided that for continuing offences, a complaint shall be filed within twelve months from the commencement of the offence. But with regard to taking cognizance of any offence, the provisions of the Code of Criminal Procedure will apply. Chapters – XIV and XV respectively provide for conditions requisite for initiation of proceedings and complaints to Magistrates. Chapter XXXVI thereof provides limitation for taking cognizance of certain

offences. Section 468 occurring in the said Chapter, which envisages bar to taking cognizance after lapse of the period of limitation, runs as follows:-

> "**468. Bar to taking cognizance after lapse of the period of limitation.-** (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation.
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> (2) The period of limitation shall be –
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> (a) six months, if the offence is punishable with fine only;
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> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
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> (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
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> (3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

7. Section 385A of the Act provides for penalty, and the maximum penalty is fine of Rs.500/-. In other words, the offence alleged is punishable with fine only. The period of limitation for such an offence, as envisaged under section 468(2)(a) Cr.P.C., is six months from the date of occurrence. In the instant case, the unauthorized construction was allegedly noticed on 31.10.1990 and the prosecution report was submitted on 05.07.1991. The offence alleged being punishable with fine only, the period of limitation for submission of prosecution report is six months from the date of occurrence, as envisaged under Section 468(2)(a) Cr.P.C. Though according to the learned counsel for the appellant the period of limitation under Section 347 of the Act is 12 months, perusal of the said section

shows that nothing therein shall affect the provisions of the Code of Criminal Procedure, 1898 in regard to the power of certain Magistrate to take cognizance of offences. Therefore, there is no force in the said contention. The prosecution report having been filed on 05.07.1991, it can safely be held that the same was beyond the period of limitation. Therefore, the trial court has rightly held that the prosecution report is barred by limitation.

8. As regards service of notice, Section 273-A of the Act provides that the Executive Officer shall serve a copy of the provisional order made under sub-section (1) on the owner of the building or well together with a notice requiring him to show-cause within a reasonable time to be mentioned in such notice. In the instant case, there is no material before this Court that Ext.3 was duly served on the accused-respondent. Although, it is alleged that the notice was sent by registered post, no proof such as A.D. has been filed.

9. In view of the above, this Court is not inclined to interfere with the impugned judgment. The appeal is accordingly dismissed.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
14th August, 2006 / ***Samal***